PETITIONERS' APPENDIX A

APPENDIX A

Excerpts of Testimony of
William G. Dillon in the Trial Court
(R. Volume III, pgs. 43-66, 89-96)

WILLIAM G. DILLON,

called as a witness for and in behalf of the cross-defendant, after being first duly sworn, in answer to questions propounded, testified as follows:

DIRECT EXAMINATION

BY MR. PRUITT:

Q Would you please state your name, please?

A William G. Dillon.

Q Where do you live, Mr. Dillon?

A 165 Longhill Drive in Short Hill, New Jersey.

Q What is your occupation, sir?

A I am an attorney.

Q With whom are you associated?

A I am a member of the firm of Simpson, Thacher and Bartlett, 120 Broadway, in New York.

Q Mr. Dillon, do you have a specialty?

A I engage in the general practice of law with a specialized practice in the field of corporations, securities and exchange, stock exchange matters.

Q How long have you appeared in securities exchange and stock exchange matters?

A Since 1948.

Q Have you been involved in registration with the American Stock Exchange?

A On many occasions.

Q And have you been involved with registration of stock with the Securities Exchange Commission?

A On many occasions.

Q And you have appeared before the Commission?

A Yes, I have.

Q You are familiar with the rules and regulations of the Securities Exchange Commission?

A I am generally familiar with them, yes.

Q And the American Stock Exchange?

A Yes, I am.

Q Mr. Dillon, your deposition was taken yesterday?

A That's correct.

Q And at that time the question was put to you concerning the stock that was transferred to the Fort Pierce Stockholders. That is the Royal American Stock, whether or not it was included in the initial registration with the SEC, and your answer was that you had to figure up some things?

A I recall that question, Mr. Pruitt, and yesterday at the conclusion of the deposition I reviewed the various filings of the registration statement. The initial one which took place in May of 1963, the second in October of 1963 and the third one in December of 1963, and my examination of those registration statements revealed that my recollection given at the deposition yesterday was faulty.

The stock originally issued to the controlling stockholders of Fort Pierce was included in the first filing of the registration statement. The one in May of 1963.

Q Now, are you acquainted with Royal American Industries?

A Yes, I am.

Q What is your connection, sir, with Royal American Industries?

A I am—my firm is general counsel for Royal American, and I am also a director and an officer of the company.

Q Do you own any stock in the corporation?

A No, I don't, but I believe my wife does.

Q Mr. Dillon, does—what is necessary to register stock with the American Stock Exchange?

A The preparation and filing with the American Stock Exchange of what is known as a listing application, and when that listing application meets with the approval of the listing committee and ultimately the Board of Governors of the American Stock Exchange, then the stock is considered listed or registered with the American Stock Exchange.

Q All right. What is necessary to register stock with the Securities Exchange Commission?

A In order to register stock with the Securities Exchange Commission a registrant must prepare and file what is known as a registration statement. Following forms prescribed by the Securities Exchange Commission. The members of the staff of the Commission then carefully review that, frequently over an extended period of time, offer their comments to the registrant and its' counsel, and accountants and ultimately when all of the SEC's comments are met to the satisfaction of the staff, the Securities and Exchange Commission permits the registration statement to become effective, and that constitutes an offering of stock; not stock as such, but an offering of stock.

Q Could you, sir, explain for us the difference between stock and an offering of stock?

A Well, it is an important concept, and the Security Act of 1933 requires only the registration of the offerings of stock. In other words, you cannot register a block of stock and then do nothing with it. You must register an offering of stock.

Q So, once it is registered it must be offered?

A Well—

Q Or is offered?

A Well, there again customarily, of course, it is in the usual case—it is offered immediately upon becoming registered.

Q Are you familiar, sir, with transactions wherein stockholders in one company will trade their stock in that company for stock in another corporation?

A Yes, I am.

Q Can this be done without the stock being registered with the Securities Exchange Commission?

A Well, basically there would be two ways to do it. One would be for the issuer of the stock, the company issuing the stock or the controlling person issuing the stock to prepare and file a registration statement with the SEC and process that, and have it become effective, and in that event you could deliver registered stock. The other basic alternative is to avail yourself of one of the several exceptions under the Securities Act of 1933.

The most commonly used exception, I would say, is the so-called private offering exception, and if you are dealing with a limited number of people and basically if those people are willing to sign what is known as an investment letter, in which they agree to acquire the stock for investment, and to hold it and not to sell, transfer, pledge or otherwise dispose of it, then in a proper fact situation that constitutes an excepted transaction under the '33 act, and under those circumstances it is proper to issue the stock.

Q Generally how many stockholders are we speaking of in this exception?

A It is a limited number and each fact situation must be examined. It is a difficult question to generalize about, but if I were asked to pick a figure which is involved in many private transactions, I would say that many private transactions involve 20 people or less.

Q Is there a written rule concerning a number of stockholders?

A I know of no written rule. There are a number of opinions of the Securities and Exchange Commission dealing with situations where they have questioned whether an offering was a public offering, and should have been registered or private offering, and one that validly comes within the exception.

Q Now, for this private offering to be a legal exception, or exception transaction, it is required that the issuer receive from people an investment letter?

A The offering must truly be a bona fide private placement, and the customary piece of evidence that is required in connection with the closing of any transaction is an investment letter.

Q What is—what does the investment letter mean?

A The investment letter means initially what it says on its face. In the usual investment letter the person acquiring the stock says that he is acquiring the stock for investment for his own account, and that he intends to hold it and that he does

not intend to sell, hypothecate, pledge, otherwise transfer or dispose of it. And although you cannot find this in any published rules of the SEC, again if you look at the SEC cases—

MR. O'CONNELL: We object to the testimony of what the cases may be, and there is no actual rule. He is giving his opinion of what the cases may or may not have been, and I don't think it is applicable here.

MR. PRUITT: Giving an expert opinion.

THE COURT: An expert opinion in the field of law usually falls to the decision of the Court based upon that decision.

MR. PRUITT: Judge, he is not talking about judicial decisions or opinions. He is talking about Securities Exchange Commission. Not Federal Court opinions.

THE COURT: Just a moment. I appreciate that.

MR. PRUITT: He is testifying not as law, but as fact.

THE COURT: Well, will not the Court have to know the decisions of the Securities Exchange Commission in considering this matter?

MR. PRUITT: No, sir, I don't think so.

THE COURT: Why would I have to know what his opinion about it is?

MR. PRUITT: All he is saying is that based upon his ex-

perience with the Commission and Board, that is the way it is done.

THE COURT: I don't believe it is material, but I will let him testify and if I am certain of my position I will strike it from the record in making up my decree.

THE WITNESS: Could I have the question again?

(Thereupon, the reporter then read the witness's previous answer.)

THE WITNESS: And based on the practice of the Commission an investment letter means a holding for a period of not less than two years.

BY MR. PRUITT:

Q If a person accepts stock after signing an investment letter in a bona fide exception or exempt transaction, is it necessary for him to register that stock with the SEC at the end of the two-year period?

A Not necessarily.

Q Now—

THE COURT: For what purpose?

MR. PRUITT: To trade.

THE COURT: All right.

BY MR. PRUITT:

Q Now let me get that in the answer to it. I meant to trade it at the end of the two-year period?

A Again, Mr. Pruitt, it would depend upon the fact in the situation as to whether the person were going to make a public offering or whether he were going to engage in other private transactions. There are variations that could happen at the end of such a period.

Q It being less than a two-year period?

A Under certain circumstances, it could be.

Q Now, to be a bona fide exempt transaction, an investment letter must be signed?

A It is the fact of the matter that controls, and an investment letter is the document which is almost universally obtained in order to evidence the intent of the parties acquiring the stock.

Q Now,—or when an investment letter is obtained or signed what is done then insofar as the certificates are concerned?

A It is customary for companies to place a legend on the certificate, confirming the statements made in the investment letter.

Q Which comes first, the investment letter or the legend?

A Well, so far as the legal—legalities of it, I would say the investment letter comes first and the legend is a—as an additional element of protection from the point of view of the issuing company.

Q Evidence that investment letter has been signed?

A That's right, It is a warning to any person to whom that stock is delivered that the stock has been acquired for investment purposes.

Q Mr. Dillon, are you familiar with the stock that was traded to the Fort Pierce Stockholders in exchange for Fort Pierce stock?

A I am familiar with it, yes.

Q You had no part in the negotiations of the drawing of this agreement?

A I did not.

Q You were concerned solely with the Securities Act of Royal American and represented Royal American in that regard?

A That's right. Mr. Pruitt, I think I probably knew sometime during the period in between—I did know, to be accurate about it, during sometime—sometimes during the period between the date which appears on that contract and the closing that the transaction had taken place and that there was going to be a closing. As a matter of fact, an opinion was requested from us.

Q Now, what stock of Royal American was given to the Fort Pierce stock?

A Well, I wasn't at the closing so I don't know exactly what certificates were given.

Q Of course, I don't mean that. I mean from where?

A The shares of stock were shares of stock which were borrowed by Royal American from Bankers Life and Casualty Company.

Q Have you been familiar with these shares of stock?

A Yes.

Q Prior to this?

A Yes. Because I had worked on the transactions as a result of which Bankers Life and Casualty Company became a substantial stockholder of Royal American.

Q Were the shares of stock which were borrowed from Bankers Life and Casualty Company registered with the American Stock Exchange?

A Yes, they were.

Q Whose decision was it that these shares be used?

A Royal American's.

Q Royal American made that decision?

A Yes.

Q Could they have issued—authorized unissued shares?

A They could in my judgment very easily have used unauthorized but unissued shares. Except that they would have

had to file a listing application with the American Stock Exchange and have that be approved by the American Stock Exchange between the signing of the contract and date of the closing.

Q Now, are you familiar with the registration of the same shares of Royal American Stock with the SEC?

A Yes, I am.

Q Did you handle that, sir?

A Yes, my firm did.

Q Are those shares now registered with the Securities Exchange Commission?

A Yes, they are.

Q I will show you these exhibits—I don't seem to remember whether—no number on them. Four exhibits that have been initialed by the Court, and I ask you do you recognize those?

A Yes, I do, Mr. Pruitt.

Q What are those?

A Well, the first document is the registration statement as initially filed with the Securities Exchange Commission on May 29, 1963. And the second one is an amendment, Amendment Number 1 to the same registration statement which was filed with the SEC on October 21st, 1963.

And the third one is Amendment Number 2 with the same registration statement filed with the SEC on December 18, 1963, and next one is the file prospectus in the form in which it became effective, and it is dated December 23rd, 1963.

MR. PRUITT: We would offer those as Royal American and MacArthur exhibits, your Honor.

THE COURT: I think those were presented at pretrial. Is there any objection?

MR. JONES: Your Honor, I think we should object to it on the basis that it appears this registration was all after a six-month period, and therefore immaterial to the issues in this case. Six-month period was—expired six months after November 7th. This prospectus was filed on May 29th, I believe, 1963, which I believe is just beyond the six-month period. Therefore, it is obvious on its face as they have already admitted that they didn't get this stock registered and it now appears from this that this registration was after the six months, and therefore we object to it on that basis.

THE COURT: I will admit the stock with your objection noted, but it is admitted. Let me have it.

MR. GOLDMAN: If your Honor, please, I would like to state so that the record is clear, that we object on the same basis, except that we don't admit that the closing was necessarily November 7th. In other words, the date of the agreement was August 1st, and we take the position that this closing was either August 1st or November 7th, and that six-month period expired either February

1st or May 7th, and that this was—this registration took place practically a year or 13 months after the agreement, rather than six months.

THE COURT: Very well. I am going to admit these and mark them, the one dated May 29th, 1963 will be Defendant's Exhibit 1. And the one dated October 21st, '63 will be Defendant's Exhibit 2. One dated December 18th will be Defendant's Exhibit 3. One defined as a prospectus is Defendant's Exhibit 4.

(Thereupon, the documents referred to were marked Defendant's Exhibits Numbers 1, 2, 3 and 4 and received in evidence.)

THE COURT: Proceed.

BY MR. PRUITT:

Q Are the shares that are the subject matter of this litigation freely tradable?

A Yes, they are.

MR. JONES: You mean now?

MR. PRUITT: Now.

BY MR. PRUITT:

Q Have been ever since the SEC approved this registration?

A Correct.

Q It was not necessary to go back and re-register a list with the American Stock Exchange?

A No. It was not.

MR. O'BRYAN: I object to the question as an obvious leading question and counsel is doing more testifying than the witness.

THE COURT: Well, I will overrule the objection. Proceed.

BY MR. PRUITT:

Q Mr. Dillon, when a bona fide exempt transaction under the '33 Act is consummated and an investment letter is signed, is it necessary to register the stock with the Securities Exchange Commission?

A No, it is not.

MR. JONES: I didn't get that question. Will you repeat it? Let me see what the—

(The Court reporter then read the pending question.)

MR. PRUITT: You may inquire.

CROSS-EXAMINATION

BY MR. JONES:

Q Now, Mr. Dillon, I believe you said that you took part in

the preparation of the original listing of the stock that is involved in this transaction on the American Stock Exchange?

A I did take part in that listing.

Q I hand you, please, sir, what we have marked as Exhibit Number 1 for identification yesterday, purporting to be listing application Number—whatever that number is. It is 4135. And see if you can identify that?

A Yes, I can identify this. As I said yesterday, there is a possibility that there is a supplemental letter to stockholders listing—but it is not significant. This is a listing application.

Q And that application was prepared by your firm or under the supervision of your firm?

A Yes, it was.

Q And specifically by you or under your supervision?

A That's correct.

Q And you furnished the opinion of counsel?

A Yes, I did.

Q Now, this purports to list 14,707,428 shares of stock for issuance to John D. MacArthur and Bankers Life and Casualty and American Airmotive pursuant to an agreement. Now, that is—I will put it this way: The stock that was offered to the stockholders of Fort Pierce was actually part of the stock which was held by Bankers and loaned to the Royal American for this transaction?

A That's correct.

Q Now, included in this application is a title headed Registration on Securities Act of 1933. Is that correct?

A Yes.

Q Mr. Dillon, was the stock issued to Bankers Life and Casualty Company and these others freely tradable?

A No, it was not.

Q I call your attention to a legend contained or advice contained in this as follows: "In the opinion of counsel for the corporation, the issuance of the shares of common stock applied for herein will be exempt from the registration requirements of the Securities Act of 1933 under the second clause of Section 4 (1) of said Act."

Now, what you mean by that is that because that was a private transaction—

A That offering was.

Q That particular offering was a private transaction?

A That offering to Bankers Life.

Q But even though it was a private transaction it was still not freely tradable stock unless it got registered on the Securities and Exchange Commission, was it?

A That stock has not been registered on the Securities Exchange.

Q But I am asking the question: This stock here could not have been traded under the registration with the American Exchange because it was—even though it was exempt under Section 4 (1) of the Securities Act of '33 because it was not registered with the Securities Exchange Commission?

A It was an exempt transaction and therefore it was not registered with the Securities Exchange Commission.

Q But it could not still have been transferred until it was registered?

A No, because it was taken as investment stock.

Q That's right. So that when you have an exempted transaction and take it as investment stock it is not freely tradable?

A Definitely not.

Q That's right. And that is why you put in here this statement: "The shares so to be issued will bear the following legend: The shares represented by this certificate had not been registered under the Securities Act of 1933. The shares have been acquired for investment and may not be sold, transferred, pledged or hypothecated in the absence of an effective registration statement for the shares under the Securities Act of 1933."

And you so advised the Royal American people that this was true, is that right?

A Yes, I did.

Q Now, what would happen if Royal American decided to go on and deal in that stock anyhow?

A If Royal American decided to deal in that stock?

Q Yes, sir.

A Well, Royal American would have to evaluate the transaction in which it proposed to deal in the stock, and it would depend entirely upon the terms of any given transaction.

Q Okay. What would happen to Bankers Life and Casualty, who took it under investment letter with that legend on it if they undertook to deal with it?

A My answer would be the same. I would depend upon the transaction.

Q Both would be in violation of the law unless they were dealing again with another private issue, is that right?

A Or another exemption under the Securities Act or registered with the Securities and Exchange Commission.

Q In other words, they have got to go back to a private transaction or they have got to register?

A There are other exemptions.

Q I know. But those are the two we are talking about now?

A Correct.

Q Now then, do I understand that Royal American borrowed from Bankers Life and Casualty Company this stock bearing this legend for the purpose of either conveying this stock or re-issuing stock to the stockholders of Fort Pierce?

A It was the latter.

Q For the purpose of re-issuing it?

A Yes.

Q Okay. Now, in order for Royal American then to issue that stock they had to comply with either an exemption or they had to register under the Securities Act?

A Royal American acting properly, of course, had to be satisfied that it was issuing stock validly and in a proper and legal manner.

Q But you didn't answer my question. My question is for Royal American to transfer or re-issue stock which they had borrowed, and maybe they intended to replace it, nevertheless in order to do it they had to either come within an exemption or they had to register it with the Securities Act?

A That's right.

Q All right. Now, suppose Royal American under those circumstances without putting—suppose Royal American had tried to transfer without going through the Securities and Exchange Act. The other alternative was to do it on the basis of an exemption or they would be in violation of the law, wouldn't they?

A That is correct.

Q So that in order to get a transaction which was exempted, one of the methods of doing it would be to deal with an offering which is not public and that is the procedure which you thought you were following at that time?

A Well—those are the proceedings which were followed in this transaction, because I have seen the file and I know that was what was authorized.

Q That is what you intended to do was make a non-public offering to these Fort Pierce stockholders?

A Well, I had nothing to do with the negotiations of the transaction.

Q Well, you were an officer of company?

A True, but I don't want to express any opinion as to the—any intent that goes back to the negotiation stage. So far as the closing of the transaction goes, it was Royal American's definite policy to comply with the law and naturally the company didn't want to issue stock certificates unless it advised that it were in compliance with the Federal Securities Law.

Q So that if and when you undertake to make an exempted offering as a non-public offering you do it so by—by putting a legend on the stock and taking an investment letter, don't you?

A Well, I don't mean to be pickey, but that may be putting the cart before the horse. Actually you get the investment letter and then the legend is placed on the stock as evidence of the fact that it was a private transaction.

Q I see. Now then would you explain to me why Royal American would come in with the stock with the legend already on it and the letter to be signed at the same time if you get the investment letter first?

A I wasn't at the closing.

Q You don't know?

A I don't know.

Q All right. Now then, let's go back to one other statement that you made. You said, as I recall, that even under an investment letter, stock held under investment letter, it is not necessary to register it in order to sell it?

A That is correct.

Q In other words, that person can—if he has got a legend on it can violate the law and sell it regardless, he can take the consequences of it?

A He could.

Q Or he could?

A He could violate the law, yes.

Q Now, if he sold it with that legend on it he would be in violation of the law unless he could get an exemption, wouldn't he?

A Well, I assume so.

Q All right. Now, if there was an understanding that the stockholders taking this would have a right to sell it back to Royal American, that would be a private transaction exempted under the Securities Act, wouldn't it, because Royal American would be one person buying back the stock that they had issued?

A If they bought it back pursuant to exemption under the Securities Act, right.

Q Now then, we have got a situation, as I understand it, that Royal American Industries borrowed from Banker's Life and Casualty Company, X-number shares of stock which had a legend on it, which under your opinion it could not be sold, transferred, pledged or otherwise disposed of except in the absence of a letter of investment. And they took that stock back in and they issued other stock to the stockholders and delivered it to them with a legend and an investment letter arrangement.

A May I see that, please?

Q Yes, sir.

A Mr. Jones, you didn't read all of this. It says or opinion of counsel.

Q All right. Now, did you give an opinion of counsel?

A I gave—

Q That it was not required under the Act?

A I did.

Q I thought yesterday you testified under deposition that you did not?

A I have no recollection of so testifying.

Q Do you have that opinion?

A I would be perfectly happy to have my recollection refreshed.

Q Do you have that opinion? Was it written?

A Which opinion are we now talking about?

Q I am referring to the one in which you said it could be done either by registration or under opinion of counsel.

A Prior to proposed transaction.

Q Would you please clarify me on what we are talking about? It can be done borrowing back the stock—

A All I am—

Q You borrowed this and said you wanted to read it and I hadn't read far enough. Now, what do you mean by that is what I am trying to find out?

A What—

Q I don't know—I don't know how to ask you any more. It is true, isn't it, that this stock which was given to the Fort Pierce stockholders with the legend and under that investment letter was not freely tradable by them?

A It definitely was not. They signed an investment letter and it definitely was not tradable.

Q Okay. Now, were you aware of the fact that the investment letter referred back to this agreement which said it was taken subject to the terms of the agreement?

A Well, as I testified yesterday at the deposition, I looked at certain of the files relating to this transaction a few days before coming down here and I did note that provision at the end of the investment letter.

Q All right.

MR. JONES: We would like to mark for identification the listing application Number 4135 which has been identified.

THE COURT: You object to it being out of order?

MR. O'CONNELL: For identification only.

THE COURT: I didn't say that. I said did opposing counsel object to it being admitted out of order.

MR. PRUITT: No, sir.

THE COURT: It is admitted. It is Plaintiff's Exhibit Number—do you have an exhibit down there?

MR. JONES: We had the investment letters, which I believe they are all there.

THE COURT: I have got six. Was there another?

MR. GOLDMAN: You made the contract seven.

THE COURT: That's correct. This will be Plaintiff's Exhibit Number 8.

(Thereupon, the document was then received into evidence as Plaintiff's Exhibit Number 8.)

MR. JONES: I have no further questions.

* * *

REDIRECT EXAMINATION

BY MR. PRUITT:

Q Mr. Dillon, at the time of your September 27th, '62 letter, you say some facts were related to you over the telephone. Did you have a contract before you at that point?

A I don't believe I did.

Q Have you since read this contract?

A Yes, I have.

Q You are familiar with it now?

A Yes, I am.

Q Would the language of the contract—was that what was related to you over the telephone?

MR. O'CONNELL: We object as immaterial and irrelevant. He is an officer of this corporation and a director and bound by law to know the contents of all the matters before his business. He is a lawyer—he is testifying about something that has been before him several months.

THE COURT: That is very true but I will hear the answer. Overruled.

THE WITNESS: I am certain that it was not. Otherwise

it never would have been phrased to begin with in the manner in which it is phrased.

BY MR. PRUITT:

Q If the Fort Pierce stockholders had not signed the investment letter and the legend had not been placed upon the certificates would this have been a bona fide exemption or exempt transaction?

A I doubt it very much.

Q Now, if the investment letter says that the Fort Pierce stockholders are taking the Royal American stock for investment and in truth and in fact he didn't intend to take it for investment, is that a bona fide—

MR. O'CONNELL: Just a minute. We object to that as certainly improper.

THE COURT: Well, it is a hypothetical case.

MR. O'CONNELL: Well, this investment letter—

THE COURT: I appreciate that hypotheticals are supposed to be based upon evidence before the Court.

MR. O'CONNELL: Because the evidence here—

THE COURT: I have let—at liberty let a good deal of evidence come in and—

MR. O'CONNELL: Let me make this further objection, your Honor, because investment letters say that it was

taken for investment subject to another agreement which required something be done.

THE COURT: I understand that counsel has asked just up to the word investment. I have read the letter. I know what the rest of it is. Proceed.

BY MR. PRUITT:

Q The question is if it is a false statement is it a bona fide exempt transaction?

A No, it is not.

Q They must take it for investment purposes, is that right?

MR. O'CONNELL: We object to that, your Honor.

THE COURT: The letter speaks for itself.

MR. PRUITT: I am not talking about the letter itself. I am talking about taking of this stock. If they don't take it for investment.

THE COURT: The only reason I said letter, you were quoting from it. Proceed with your answer.

THE WITNESS: In order to come within the exemption afforded by Section 41 of the Securities Act it must be a bona fide private transaction.

MR. O'CONNELL: Let me move that be stricken, your Honor, for this reason: I want it stricken because the testimony has been to the contrary. This man has testified

that if a man agreed to buy the stock back there is nothing wrong with it. The letter which is in evidence says there is nothing wrong with it because it suggests that be done. This is not—investment letter is not only for the purpose of a six-month period in which it could be purchased back.

THE COURT: Mr. O'Connell, I receive your objection and I also want all of you to know that there appears to be a goodly portion of testimony in hypothetical form which is not founded on the evidence before the Court. Such as is not will not be considered and such as is will be considered. Proceed.

MR. PRUITT: That last one wasn't a hypothetical. That was a direct question.

THE COURT: I'm sorry, Mr. Pruitt.

MR. PRUITT: I said my last question was not a hypothetical. I asked him a direct question about what constitutes the bona fide exempt transaction, that it has to be taken for investment purposes, and he said yes. That is not hypothetical. That is a statement.

THE COURT: That is all right. Proceed.

BY MR. PRUITT:

Q Now, once a stock is taken for investment purposes is it at that time necessary to register it with the Securities Exchange Commission?

A No, it is not.

Q Mr. Dillon, if this were not an exempt transaction or this stock was not taken for example for investment purposes, how could it have been transferred to the Fort Pierce stockholders, legally?

A Only pursuant to an effective registration statement or some other exemption under the Securities Act of 1933.

Q Then the stock would have had to have been registered with the SEC at that time that they took it, took the stock?

A At the time it was delivered to them, yes.

Q So, if it wasn't registered at the time with the SEC at the time they took delivery, it had to be a bona fide exempt transaction, is that correct?

A Yes.

MR. PRUITT: That is all.

THE COURT: Anything further?

MR. JONES: I want to ask you this question. You said it doesn't have to be registered. But until it is registered it can't be traded, can it? You said stock received with the legend on it under investment letter does not have to be registered.

THE WITNESS: No, it doesn't have to be registered.

MR. JONES: But if you want to trade it you must register it?

THE WITNESS: Well, stock received under investment letter is customarily not registered. The whole purpose is for the parties to avail themselves of an exemption.

MR. JONES: But I believe you said it is locked in for two years?

THE WITNESS: The SEC rule of thumb is two years.

MR. JONES: Then for two years they can't—but if they want to get rid of it within that time and if it is in fact registered then it becomes freely tradable?

THE WITNESS: That's right.

MR. JONES: All right. Therefore, while it doesn't have to be registered because nobody is going to make, no one is going out and sell their stock, in order to sell it they either are locked in for two years or it must be registered to be sold?

THE WITNESS: That is basically correct, yes.

MR. JONES: Your Honor—

THE COURT: Just a minute. Anything further?

MR. JONES: Only one thing. I would like to have a five minute conference with counsel to see if there is anything else we want to ask, but there has been some interrogatories and other things put in. I don't know just where we stand right at this moment.

THE COURT: Very well. We will be in recess for a few minutes.

(Thereupon, a short recess was taken.)

MR. JONES: We have no further questions.

THE COURT: Any further questions by anyone?

MR. PRUITT: No, sir.

THE COURT: You may step down.

(Witness excused.)

MR. JONES: We don't know how this case is going to proceed, so we would like to ask Mr. Dillon to be available if we have to use him for further—

MR. DILLON: I am not subpoenaed, Mr. Jones. I have some very pressing commitments.

MR. JONES: I hope we are going to end this thing up very shortly.

MR. PRUITT: I don't anticipate that will take very much longer.

THE COURT: Very well.

MR. PRUITT: I think it will be short examination. Might be able to get it in before the lunch hour.

MR. O'CONNELL: Did I offer these letters in evidence?

THE COURT: No. It hasn't come back—when they close you will have an opportunity. Call your next witness.

* * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing REPLY TO BRIEF OF RESPONDENTS and Appendix has been served upon each of the following:

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Attorneys for Respondents, by mail, this ..... day of ....., 1967.

.....
Attorney for Petitioners